

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1384 of 2022

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Nityanand Kumar, Son of Late Suresh Kumar, Resident of Village and P.O. - Bhramarpur, P.S. - Bhawanipur (Bihpur), District - Bhagalpur, Retired Peon (IVth Grade Employee) of J.P. College, Narayanpur, District - Bhagalpur under Tilka Manjhi Bhagalpur University.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Human Resources Development (Education) Department, Government of Bihar, Patna.
2. The Commissioner-Cum-Secretary, Department of Human Resources Development Department, Government of Bihar, Patna.
3. The Director, Higher Education, Bihar, Patna.
4. The Vice- Chancellor, Tilka Manjhi Bhagalpur University, Bhagalpur.
5. The Registrar, Tilka Manjhi Bhagalpur University, Bhagalpur.
6. The Principal J.P. College, Narayanpur, District - Bhagalpur (Under Tilka Manjhi Bhagalpur University).
7. The Finance Officer, J.P. College, Narayanpur, District - Bhagalpur.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 1410 of 2022

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Amrendra Thakur, Son of Late Kallar Thakur, resident of Village and P.O. - Madhurapur, P.S.- Bhawanipur (Bihpur), District - Bhagalpur, Retired Peon (IVth Grade Employee) of J.P. College, Narayanpur, District - Bhagalpur under Tilka Manjhi Bhagalpur University.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Human Resources Development (Education) Department, Government of Bihar, Patna.
2. The Commissioner-cum-Secretary, Department of Human Resources Development Department, Government of Bihar, Patna.
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4. The Vice-Chancellor, Tilka Manjhi Bhagalpur University, Bhagalpur.
5. The Registrar, Tilka Manjhi Bhagalpur University, Bhagalpur.
6. The Principal, J.P. College, Narayanpur, District - Bhagalpur (under Tilka Manjhi Bhagalpur University).
7. The Finance Officer, J.P. College, Narayanpur, District - Bhagalpur.

... .. Respondent/s



Appearance :

(In Civil Writ Jurisdiction Case No. 1384 of 2022)

For the Petitioner/s : Ms. Shashi Priya Pathak, Adv.
Mr. Rajesh Kumar Pandey, Advocate
For the Respondent/s : Mr. Madhaw Pd. Yadaw, GP-23
For the University : Mr. Ritesh Kumar, Advocate

(In Civil Writ Jurisdiction Case No. 1410 of 2022)

For the Petitioner/s : Mr. Rajesh Kumar Pandey, Advocate
For the Respondent/s : Mr. Madan Jeet Kumar, GP-20
For the University : Mr. Ashhar Mustafa, Adv.

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

10 08-05-2025 Heard the parties.

2. Considering the identical nature of grievance and the issue(s) posed before this Court, with consent of the parties, both the writ petitions are being heard together and disposed off by a common order.

3. The petitioners are Class-IV employees of J.P. College, Narayanpur, Bhagalpur under Tilka Manjhi University, Bhagalpur. After rendering their long and satisfactory services, they came to be superannuated in the year 2019 and 2020, respectively. On being aggrieved by the inaction of the respondents in not extending the payment of differences of salary and its arrears on account of 6th and 7th Pay Revision as also on account of ACP/MACP along with consequential benefits and D.D.A. with 9% interest, they approached this Court by filing the present writ petitions.

4. Mr. Ritesh Kumar, learned Advocate for the University, at the outset, has submitted that the claim of the petitioners, as prayed for in the present writ petitions, was duly considered by the University and on verification of record(s), it



was found that the petitioner (in C.W.J.C. No. 1384 of 2022) has been paid an amount to the tune of Rs.58,801/- in excess to his entitlement for the period March 1989 to October 2019; whereas the petitioner (in C.W.J.C. No. 1410 of 2022) has been paid an excess amount to the tune of Rs.1,04,990,65/-.

5. Mr. Kumar, learned Advocate for the University, in substance, contended that all the substantive amounts have been paid to the petitioners, however, on account of wrong calculation, both the petitioners have been paid excess amount to their entitlement which are yet to be recovered.

6. Ms. Shashi Priya Pathak, learned Advocate for the petitioners, at this juncture, refuted the contentions of the University and submitted that it is the admitted fact that the petitioners are Class-IV employees and they came to be superannuated long back in the year 2019 and 2020 itself; hence, in any view of the matter, excess amount paid to the petitioners cannot be recovered from their retiral benefits or other dues. The proposed action of the respondent authorities is in the teeth of the mandate of the Hon'ble Apex Court in the case of *State of Punjab and Ors. Vs. Rafiq Masih (White Washer) and Ors., [(2015) 4 SCC 334]*, wherein the Court deprecated and forbids the recovery of any amount from the retiral benefits of Class-III and IV employees. All the more, the recovery of amount paid in excess, without any fault of



recipient.

7. Learned counsel for the petitioners further contended that there is no allegation with regard to any misrepresentation and fraud on the part of the petitioners and, as such, even if it is admitted there was some wrong calculation in the amount while fixing the pay-scale and extending the retiral benefits and dues, in no circumstances, the same can be directed to be recovered after several years.

8. This Court having heard the learned Advocate for the respective parties and after perusal of the materials, *prima facie*, is of the opinion that substantive amount under the respective heads have been paid to the petitioners; moreover, there is no denial to the averments made in the counter affidavit. So far the contention of the University in respect to recovery of the excess amount from the petitioners are concerned, it would be pertinent to observe that when the issue of recovery from Class-III and Class-IV employees were raised in various cases, in order to put a quitous, the Hon'ble Supreme Court in the case of **Rafiq Masih** (supra) has been painstakingly postulated some of the situations of the hardship wherein recovery by the employee would be found impermissible in law; the relevant paragraph is quoted hereunder:-

18. It is not possible to postulate all situations of hardship which would govern employees



on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

9. The Hon’ble Supreme Court in no uncertain



terms has held that no recovery can be made from the retired employees, or employees who are due to retire within one year, of the order of recovery and when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

10. Considering the submissions advanced by the learned Advocate for the respective parties and the aforesaid settled legal position as also in order to give quitous to the litigation, this Court deems it fit and proper to close the writ petitions by making it clear that no recovery shall be made from the petitioners in the light of the dictum afore-noted.

11. The writ petition stands closed with the afore-noted observation(s).

(Harish Kumar, J)

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